under section 75(1) of ISA if, and only if, the case had been certified by the Attorney-General as affecting the security of the Federation. In our view, since the new section 113 of the Criminal Procedure Code it is so admissible in *all* cases, be they security cases or otherwise.

As regards the charge under the Arms Act, it will be noted that only offences under section *9* of that Act are specified in the Second Schedule, whereas the accused is charged under section *10*. It follows, in our opinion, that the cautioned statement would not have been admissible under section 75(1) of ISA; however, in our judgment it would have been admissible under section 113 of the Criminal Procedure Code.

There appears to have been some confusion regarding the relationship of section 75(1) of ISA with the new section 113 of the Criminal Procedure Code. The ISA was enacted in 1960. At that time the old section 113 of the Criminal Procedure Code held sway, so that a statement made by a person to a police officer during the course of police investigation could not be used in evidence against him. Parliament by enacting section 75(1) of ISA deliberately made an *exception* as regards a person charged under the Act or under any law specified in its Second Schedule. That section was modelled on subsection (4) of section 13 of the Prevention of Corruption Ordinance No. 5 of 1950, added by Ordinance 39 of 1952. The common ancestor of all these provisions was regulation 33 of the Emergency Regulations, 1948, which made the first breach in the long standing principle embodied in the old section 113 of the Criminal Procedure Code.

Then in 1976 Parliament by Act A324 repealed the old section 113 of the Criminal Procedure Code and by the new one expressly allows a cautioned statement made by the accused to a police officer, which satisfies the conditions set out therein, to be used in evidence at his trial. This applies to *all* persons charged with *any* offence under *any* law. Clearly it also covers offences under ISA and under any law specified in its Second Schedule and all offences under the Prevention of Corruption law. So section 75(1) of ISA and the corresponding provision in the Prevention of Corruption law are now superfluous. It would make for simplicity if these overlapping laws were replaced by a single law.

Encik Mohamed Noor said that the words "any other person concerned, or not, in the arrest" in section 75(1) ISA do not appear in section 113(1) of the Criminal Procedure Code. Our research reveals that these words were added to regulation 33 of the Emergency Regulation, 1948, to negative the effect of the decision of the Malayan Court of Appeal in *Chong See Leong* v. *Public Prosecutor*.[1] This and, if any, other differences should be considered and either retained or removed when Parliament replaces these laws by a single one.

The best thing to do is simply to repeal all the other laws and let only the new section 113 of the Criminal Procedure Code remain with such amendments as may be necessary.

In the event, at the end of a trial within a trial, the learned judge found that the cautioned statement in question was made under duress and so inadmissible. The learned Deputy was therefore right in asking this court to merely make a ruling on admissibility without interfering with the order of acquittal.

Ruling accordingly.

Solicitors: *Datuk Wan Mustapha & Co.*

LEE CHOW MENG v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah and Wan Suleiman F.JJ.) January 23 and April 8, 1978]

[Kuala Lumpur — Federal Court Criminal Appeal No. 25 of 1977]

Criminal Law and Procedure — Conviction by President of Sessions Court with special powers — Appeal to High Court dismissed — Whether accused can appeal to Federal Court — Act giving right of appeal enacted after date of conviction — Whether Act has retrospective effect — Distinction between statutes dealing with rights and statutes dealing with procedure — Reference on point of law not available — Courts of Judicature Act, 1964, ss. 50(1) and 66.

Interpretation of Statutes — Distinction between statutes dealing with rights, and statutes dealing with procedure — Prospective or retrospective effect.

The appellant had been convicted and sentenced by the President of the Sessions Court with special powers in Kuala Lumpur. His appeal to the High Court was dismissed. The case was then referred by the High Court to the Federal Court on a question of public interest which had arisen in the appeal. By the time the reference come before the Federal Court, sections 50(1) and 66 of the Courts of Judicature Act, 1964, had been amended so as to take away the power of the High Court to make a reference in respect of the decision of a President of the Sessions Court with special powers. The Federal Court therefore refused to consider the reference. The appellant then appealed to the Federal Court, leave having been given to him to file the record of appeal out of time.

Held: the amendment giving a right of further appeal to the Federal Court deals not only with a matter of mere procedure but confers a substantive right. *Prima facie* it has prospective effect only unless there is clear indication to the contrary. There was no such indication in this case and therefore the appellant had no right of further appeal to the Federal Court.

Cases referred to:-

(1) *Gardner* v. *Lucas* (1878) 3 App. Cas. 582, 603.

(2) *Re Joseph Suche & Co. Ltd.* (1875) 1 Ch. D. 48, 50.

(3) *Colonial Sugar Refining Co.* v. *Irving* [1905] A.C. 362.

(4) *Chellapah* v. *Malayan Railway Administration* [1948-49] M.L.J. Supp. 173.

The following cases were also cited in argument: *Public Prosecutor* v. *Datuk Haji Harun bin Idris* [1977] 1 M.L.J. 14, *Hosie* v. *Kildare* [1926] Irish Reports 47.

FEDERAL COURT.

Jagjit Singh for the appellants.

Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) for the respondent.

Suffian L.P. (delivering the judgment of the Court): On April 19, 1975, the appellant was convicted and sentenced by the Special President in Kuala Lumpur. He appealed and on October 22, 1975, he lost his appeal in the High Court. At that time he could not

have appealed further to this court. The only way he could have brought this matter to this court was by way of a reference under section 66 of the Courts of Judicature Act, 1964, and he managed to get the High Court to so refer it, reserving for the decision of this court a question of law of public interest which had arisen in the appeal. But by the time the reference came up before us sections 50(1) and 66 of the Act had been amended by Act A328 of 1976, so that when a High Court judge has decided an appeal from the decision of a Special President — like the learned President here — the aggrieved party may appeal in the ordinary way of the Federal Court under the amended subsection (1) of section 50, but the judge may not make a reference under section 66. This court, being of opinion that it had no jurisdiction to do so, refused to consider the reference; whereupon the appellant filed notice of appeal and as he was out of time — through no fault of his — applied for leave to file the record of appeal out of time, which leave was granted.

When this matter came up again before this court, the learned Deputy took a preliminary objection, arguing that this court has no jurisdiction to entertain this appeal, as the appellant was convicted at a time when he could not have appealed beyond the High Court, and that the fact that we have given the appellant leave to file his appeal record out of time makes no difference.

Mr. Jagjit Singh on the other hand contends that before the amendment there was one way by which this matter could have reached this court — by way of reference — and that after the amendment another way — by way of appeal — and that it does not matter by which way this matter can reach this court, and that the amendment clearly shows that the legislature does not intend to shut out the appellant altogether from resorting to this court, and that therefore this court has jurisdiction to entertain this appeal.

We are of the opinion that we have no jurisdiction to hear this appeal.

A statute dealing with *procedure* has retrospective effect, that is, it applies to proceedings begun before and after the commencement of the statute, unless a contrary intention is expressed or clearly implied. This was so stated by Lord Blackburn in *Gardner* v. *Lucas*.[1]

"...it is perfectly settled that if the legislature forms a new procedure, that, instead of proceeding in this form, you should proceed in another and a different way, clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be."

On the other hand a statute dealing with rights has effect only for the future and is not to be construed retrospectively, it does not apply to proceedings begun before its commencement, it only affects proceedings begun after that, unless there is a clear indication to the contrary. This was so stated by Jessel M.R. in *Re Joseph Suche & Co. Ltd.*[2] in the following words:

"It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them."

Does a statute allowing a convicted person to appeal to a superior court deal with procedure or with rights?

No authority need be cited for the proposition that no court has an inherent appellate jurisdiction and that a dissatisfied person may appeal if, and only if, statute so provides.

It is thus clear that a statute that allows a person to appeal to a superior court is not merely dealing with a matter of procedure but with rights. This is borne out by a Privy Council case *Colonial Sugar Refining Co.* v. *Irving*.[3] There an application was made to the Judicial Committee to dismiss an appeal from the judgment of the Supreme Court of Queensland, on the ground that the power of the court below to give leave to appeal had been abrogated by section 39 of the Australian Commonwealth Judiciary Act, 1903. The action in which the appeal was brought had commenced on October 25, 1902, and the leave to appeal was given on September 4, 1903. In the meantime, the 1903 Act had been passed. The Judicial Committee dismissed the application, Lord Macnaghten saying:

"As regards the general principles applicable to the case there was no controversy. On the one hand it was not disputed that if the matter in question be a matter of procedure only, the petition (to dismiss) is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the [Judiciary] Act, it was conceded that in accordance with a long line of authorities from the time of Lord Coke to the present day the appellant [the Sugar Co.] would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure."

Here at the time of the appellant's conviction he had no right of appeal from the appellate High Court to the Federal Court, so there is no question of the amendment to the Courts of Judicature Act interfering with his right of appeal then existing. The amendment confers a right of further appeal to the Federal Court on a person convicted by a Special President. This amendment deals not with a mere matter of procedure, but confers a substantive right. *Prima facie* it has prospective effect only unless there is a clear indication to the contrary. In our judgment there is no such indication here. It follows therefore that a person convicted by a Special President before the amendment who has lost an appeal to the High Court has no right of further appeal to this court.

Since writing this judgment we came across *Chellapah* v. *Malayan Railway Administration*[4] where a person affected by any order or decision of the Registrar could appeal to a judge in chambers until December 31, 1948, and after February 18, 1949, but not during the period of about eight weeks between those two dates. The right of appeal until the earlier date was given by the Courts Enactment and a rule under it, and after the second date by the Courts Ordinance, 1948 (replacing the Enactment), and a rule under it. It was held that a person affected by an order or decision of the Registrar on February 15, 1948, could appeal under the Ordinance, since the

Ordinance itself came into force on January 1, 1949, and from the words used in the legislation it could be said that the hiatus was an oversight and not intentional.

On the facts there, we would have come to the same conclusion. But here, on the contrary, the appellants could not have appealed before the amendment and the amendment only gives him a right to appeal as to the future. But with respect we would not agree with the above case in so far as it decided that an enactment relating to appeals is one that treats of procedure and practice and therefore has a retrospective construction in the absence of a clear indication to the contrary.

In the circumstances we would uphold the learned Deputy's preliminary objection and strike off this appeal.

Order accordingly.

Solicitors: *Jagjit Singh & Co.*

PUBLIC PROSECUTOR v. OSMAN BIN APO HAMID & ANOR.

[A.Cr.J. (Abdul Razak J.) November 4, 1976]

[Kuala Trengganu — Criminal Appeal No. 12 of 1975]

Food Control — Carrying bags of rice exceeding minimum allowed by permit — Contravention of Lembaga Padi dan Beras Negara (Restriction of Movement) Trengganu Regulation — Plea of absence of mens rea — Question of strict liability.

The respondents were found carrying bags of rice in excess of that allowed by the permits which they produced. They were detained and subsequently charged. Both respondents admitted knowledge of the fact that they carried 130 bags of rice but they denied knowledge of the number allowed in the permits, that is, 80 bags only.

The prosecution appealed against the decision of the lower court acquitting the accused.

Held, allowing the appeal: looking at the statute and the regulations under which it was made, it must have been intended that the latter be of strict liability as it was necessary to maintain a stable and proper price for padi and rice for the consumer and the padi planter and to restrict movement of rice and padi in the States so as to not to offset the balance of distribution of the commodity and its expected price levels in the various States.

Cases referred to:-

(1) *Sweet* v. *Parsley* [1970] A.C. 132.

(2) *Alphacell Ltd.* v. *Woodward* [1972] 1 Q.B. 127.

CRIMINAL APPEAL.

Mohamed Nor bin Mohamad (Deputy Public Prosecutor) for the appellant.

Sri Ram for the respondents.

Abdul Razak J.: This is an appeal against the decision of the President Sessions Court at Kemaman wherein he acquitted the accused after calling for the defence. The D.P.P. has appealed against the acquittal. The charge reads as follows:

"That you on the 15th day of February, 1973, at about 7.05 p.m. at 34¼ m.s. Kuantan/Kemaman road, in the District of Kuantan, in the State of Pahang, being the driver of M/Lorry No. BT. 9841, did remove 50 bags of rice in the said vehicle from controlled area of the State of Trengganu into Pahang, without the prior written permission of the Director General, in contravention of the Lembaga Padi dan Beras Negara (Restriction of Movement) Trengganu Regulation vide P.U.(A) 320/71 and that you have thereby committed an offence punishable under section 27(1) of the Lembaga Padi dan Beras Negara Act No. 47 of 1971."

The facts are simply these: On February 15, 1973 at about 6 p.m. an inspector from the L.P.N. and two policemen held a road block at 34¼ milestone Kemaman/Kuantan road. They stopped a lorry driven by the 1st respondent with the attendant, 2nd respondent, in it and found to be carrying bags of rice. PW(1) said the driver produced 2 permits, P(1) & P(2). The permits merely allowed the lorry to carry 80 bags of Mahsuri rice. There were, however, found 50 bags extra. Both the respondents were therefore detained and subsequently charged. The P.C. gave evidence more or less to the same effect. There was no doubt that 130 bags were carried because they were later counted and confirmed at the LPN office. The 50 bags of rice were later sold and $3,112.40 realised. In their defence, the 1st respondent said he was asked to load the lorry with the rice by the hirer of the lorry. He knew he was carrying 130 bags of rice. The permit was taken by the 2nd respondent from the LPN office but he did not read it. He said he was a driver for the last 6 years. Normally, he said, he would just keep the permit suggesting that he had had to do with permits before. He thought it covered the 130 bags. The 2nd respondent also said they carried 130 bags of rice but he did not know what was written in the permit. In cross-examination he said he cannot read, so he did not check the permit. But later he said he could read but the figure in the permit was illegible. It was submitted by the defence that the defendants had no knowledge that they were allowed to carry 80 bags only and should not be convicted. I do not think I can agree with that contention. In my view the offence is one of strict liability in which the mental element is negatived by the legislature. I have no doubt that the legislature intended that the category of physical acts of this nature must itself constitute an offence if only because the alternative would mean that the apprehension of offences of this nature would be well nigh difficult if not impossible. The creation of absolute offences is not new. Indeed *Sweet* v. *Parsley*(1) which I shall refer to takes cognizance of this fact. Lord Reid at page 148 says:

"Our first duty is to consider the words of the Act: if they show a clear intention to create an absolute offence that is an end of the matter."

The problem faced by the legislature if in all cases *mens rea* is required can be quite frustrating as Lord Reid says at page 150:

"The choice would be much more difficult if there were no other way open than either *mens rea* in the full sense or an absolute offence; for there are many kinds of case where putting on the prosecutor the full burden of proving *mens rea* creates great difficulties and may lead to many unjust acquittals."

And Lord Morris at page 152 in the same vein had this to say on the requirement of *mens rea*:

"But as Parliament is supreme it is open to Parliament to legislate in such a way that an offence may be created of which someone may be found guilty though *mens rea* is lacking. There may be cases in which as Channell J. said in *Pearks, Gunston & Tee Ltd.* v. *Ward* [1902] 2 K.B. 1, 11: